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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,347	06/25/2004	Minoru Hoshino	09450/0201430-US0	2617
33766	7590	08/28/2006	EXAMINER	
CHERYL F. COHEN, LLC 2409 CHURCH ROAD CHERRY HILL, NJ 08002			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/500,347	HOSHINO ET AL.	
	Examiner	Art Unit	
	Melanie J. Hand	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments, see Remarks, filed June 8, 2006, with respect to the rejection(s) of claim(s) 1-12 under 35 U.S.C. 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a different interpretation of the previously applied prior art reference of Fernfors.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernfors (U.S. Patent No. 6,179,820).

With respect to **Claims 1,2**: Fernfors teaches absorbent pants 1, having a longitudinal axis and lateral axis perpendicular thereto, comprised of three layers: inner fluid permeable layer 7, fluid impermeable barrier layer 8, absorbent core 9 and outer layer 20 laminated to the outside facing surface of barrier layer 8. As can be seen in Fig. 1, pants 1 have flaps that are formed at the peripheral edge parts of barrier layer 8 and extend beyond the laterally opposed side edges of pants 1. Pants 1 have front waist region 2, rear waist region 3 and crotch 4 and leg openings when assembled around the waist of a user. A plurality of elastic elements 25 are disposed in the front and rear waist regions 2,3 along end edges 18,19 and elastic elements are also disposed along the side edges 5,6 of crotch region 4. Elastic elements 10 are also present in the crotch region and define paths 11 and 12 that each extend from a first side edge of front waist region 2 and terminate at a second end edge on the opposite side edge of rear waist region 3. Paths 13 and 14 comprising elastic elements 10 begin similarly at a first side edge of the rear waist region 3 and terminate at an opposing side edge on front waist region 2. As can best be seen in Fig. 1, these paths 11,12,13,14 intersect one another in a central portion of the front and rear waist regions 2,3. Since the elastic elements 10 number at least one, the elastic elements that extend from intersection points 28 to the side edges define third elastic bodies separate from the waist elastics 25 and the leg elastics. (Col. 4, lines 41-45, Col. 5, lines 4-7, 18-56, Col. 6, lines 50-67, Col. 7, lines 1,2,11-15, 21-25, 65-67, Col. 8, lines 1-10)

As can be seen in Figs. 1 and 4, the third elastic bodies intersect the waist and leg elastics four times and therefore Fernfors does not teach that the waist, leg and third elastics intersect five times. However an alternate arrangement of the waist, leg and third elastics of Fernfors in which the diamond-shape bound by the elastic portions in the absorbent core area is collapsed such that instead of four intersection points there will be five. Such a configuration still

Art Unit: 3761

has waist, leg and third elastic that criss-cross in the dorsal and ventral waist areas to intersect one another and the leg elastics while still providing substantially identical functionality.

Therefore it would be obvious to one of ordinary skill in the art to modify the positioning of said third elastics so as to have one intersection point with each other and two intersection points each with each leg elastic.

With respect to **Claims 3,4,8,9**: Fernfors teaches that the main absorbent body part comprising layers 7,8,9 is bonded to outer layer 20. (Col. 5, lines 52-56) As can best be seen in Fig. 3, crotch region 4 is substantially concave toward the inner side of the main absorbent body of pants 1. The portions of paths 11,12,13,14 that extend from the intersection points toward the side edges are angled away from the leg parts of pants 1 and terminate below substantially all of the respective side flap parts in each waist region 2,3, as can be seen in Figs. 1 and 3. (Claim 4) (Col. 5, lines 18-20)

With respect to **Claims 5,10**: Fernfors teaches that the elastic elements bordering edges 5,6 are intended during use to exert a contracting force around the user's legs. (Col. 10, lines 56-59)

With respect to **Claims 6,11**: The nature of the paths 11,12,13,14 formed by elastic elements 10, i.e. their location and points of intersection, result in a lower tensile strength at the point of intersection 28 when compared to the side flaps. The intersection points are defined by the intersection of two elastic elements, which will decrease the tensile strength of the main absorbent body at those points as opposed to the flaps because the elements 10 are integrated between the outer cover 20 and barrier layer 8 (Col. 9, lines 33-38), where the total occupied by elastic is lower and thus the tensile strength is greater.

With respect to **Claims 7,12**: Fernfors teaches that elastic elements 10 are also arranged on the inside of core 9 that is centrally located in pants 1. (Col. 10, lines 25-27)

With respect to **Claims 13,14**: As can be seen in Fig. 1, pants 1 have flaps that are formed at the peripheral edge parts of barrier layer 8 and extend beyond the laterally opposed side edges of pants 1.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

Art Unit: 3761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

